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OPINION NUMBER 89-550

Mr. Guy Otwell
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Department of Economic Development
P. O. Box 94185
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Dear Mr. Otwell:

You have requested an opinion regarding the confidentiality allowed by law for the Screening Committee of the Louisiana Economic Development Corporation (LEDC).

The LEDC is charged with the administration of the economic development programs of the Department of Economic Development, including important programs for economic opportunities and developments for minorities. These programs provide either direct loans or loan guaranties to qualified applicants in order to stimulate economic development.

The function of the Screening Committee is to make the threshold determination of whether the applicants are eligible to participate in one of these programs. As part of this duty, you state that the committee must review "personal and/or corporate business information, financial records, tax records, and the business plan of the applicant."

Your question is bifurcated: (1) Are these records privileged under the public records law (LSA-R.S. 44:1 et seq.), and (2) does the existence of such privilege or other grounds justify the Screening Committee to go into executive session under the open meetings law (LSA-R.S. 42:6.1)?

The answer to both questions is affirmative.

R.S. 44:1 et seq. and R.S. 42:4.1 et seq. implement the constitutional guarantee of Louisiana Constitution Art. 12, Sec. 3 (1974):

No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases provided by law. (Emphasis added.)

It is conceded that the Screening Committee is a public body whose meetings are subject to R.S. 42:5: "Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:6, R.S. 42:6.1, or R.S. 42:6.2."

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R.S. 42:6 requires that the Committee must, by 2/3 vote in an open meeting for which proper notice has been given under R.S. 42:7, formally decide to go into executive session. This requires substantive grounds as well as the simple procedure of a 2/3 vote of those present.

Two of the grounds specified by R.S. 42:6.1 apply to the type of confidential deliberations contemplated by the Screening Committee. Section 6.1A(1) authorizes an executive session to discuss the "character [or] professional competence" of a person, and Sec. 6.1A(8) is an omnibus provision for "any other matters now provided for or as may be provided for by the legislature." The latter provision clearly indicates that the criteria of Sec. 6.1 are not exclusive and may be interpreted or even supplemented by other legislation, if the legislative intent for such in pari materia interpretation be clear.

Such is the case, in our opinion, with the exemption provision of the public records law, LSA-R.S. 44:4. Two subsections, R.S. 44:4(1) and (3) render the types of records to be examined by the Screening Committee in its investigation of applicants confidential and privileged. The Committee has no duty to disclose the contents of these records, either orally in open discussion or by physical production of the records themselves.

If the records be privileged under a sister sunshine statute, then R.S. 42:6.1(8) is properly interpreted to authorize an executive session to confidentially discuss the contents of the privileged records. The open meetings law is not to be interpreted to defeat or nullify the substantive guarantees of the public records law; the two statutes are presumed to be harmony and should be so interpreted. The presence and applicability of R.S. 42:6.1A(1) further supports the conclusion that there exists substantive statutory grounds for going into executive session, if a 2/3 vote of those present is made in an open, properly noticed session.

The Screening Committee should be warned that its discussion in executive session is limited to the subject-matter of the privileged records and the character and professional competence of the applicant reflected or contradicted in the records. R.S. 42:6. Upon returning from executive session any vote must be taken in open session. Ibid.

Trusting this to be of sufficient information, I am

Sincerely,

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